

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAVID THOMPSON,

Plaintiff,

v.

CORRECTIONAL MEDICAL
SERVICES, INCORPORATED,
and DARRELLE BRADY,

Defendants.

Case No. 09-14483

Paul D. Borman
United States District Judge

Michael Hluchaniuk
United States Magistrate Judge

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**OPINION AND ORDER (1) ADOPTING THE MAGISTRATE JUDGE'S REPORT AND
RECOMMENDATION, (2) DISMISSING DEFENDANT IVENS WITHOUT
PREJUDICE, (3) GRANTING DEFENDANTS' MOTION FOR LEAVE TO FILE A
DELAYED MOTION FOR SUMMARY JUDGMENT (Dkt. No. 50), and (4) ALLOWING
DEFENDANTS TO FILE A MOTION FOR SUMMARY JUDGMENT WITHIN 14 DAYS
OF THE DATE OF THIS ORDER**

Before the Court is Magistrate Judge Michael Hluchaniuk's Report and Recommendation to Dismiss Defendant Ivens for Failure to Timely Effectuate Service. (Dkt. No. 48.)

Having reviewed the Report and Recommendation, and there being no timely objections from either party under 28 U.S.C. § 636(b)(1) and E.D. Mich L.R. 72.1(d), the Court **ADOPTS** the Magistrate Judge's Report and Recommendation, and **DISMISSES** Defendant Ivens **WITHOUT PREJUDICE** pursuant to Federal Rule of Civil Procedure 4(m).

The cutoff for dispositive motions in this matter was set for October 3, 2011. (Dkt. No. 38.) On March 22, 2011, the Magistrate Judge entered an Order to Show Cause why Defendant Ivens should not be dismissed for failure to effectuate service. (Dkt. No. 40.) While the show cause order


was pending, Defendants did not file a motion for summary judgment. On November 4, 2011, the Magistrate Judge filed his Report and Recommendation, recommending dismissal of Defendant Ivens, and also filed a Certification of Completion of Pretrial Proceedings, stating that the case is ready for trial. (Dkt. No. 49.) On November 8, 2011, Defendants filed a Motion for Leave to File a Delayed Motion for Summary Judgment. (Dkt. No. 50.) Plaintiff filed a Response on December 5, 2011. (Dkt. No. 52.)

Defendants argue that they did not file a motion for summary judgment earlier because of the open issue as to whether or not Defendant Ivens would remain a party in this case. Defendants request an order allowing them 14 days to file a motion for summary judgment.

Although discovery has been completed, the instant case is not currently set for trial. The unserved Defendant has been dismissed. Summary judgment will aid judicial economy by bringing the evidentiary issues and relevant issues of fact into better focus prior to trial. Furthermore, the Court finds that the delay caused by allowing Defendants to file their dispositive motion will not prejudice Plaintiff. Plaintiff's right to trial is not denied, as he alleges, if his trial is merely delayed temporarily while the Court considers Defendants' Motion for Summary Judgment.

Accordingly, Defendants' Motion for Leave to File a Delayed Motion for Summary Judgment is **GRANTED**. Defendants have 14 days from the date of this Order to file their Motion for Summary Judgment.

IT IS SO ORDERED.


PAUL D. BORMAN
UNITED STATES DISTRICT JUDGE

Dated:

3-12-12